

EXHIBIT I

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 : CV-91-875 : CV-90-3973
6 IN RE: ASBESTOS LITIGATION, -----X

7 U.S. Courthouse
8 Brooklyn, New York

9 CIVIL CAUSE FOR HEARING

10 December 13, 2001
11 Ten o'clock a.m.

12 BEFORE:

13 HONORABLE JACK B. WEINSTEIN
14 HONORABLE BURTON R. LIFLAND

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14 Proceedings recorded by mechanical stenography.
 15 Transcript produced by Computer-Assisted Transcription.

20 in addition to the extensive submissions we have received,
 21 which I have here as a result of this proposed hearing, that
 22 there may be a misallocation of the funds that may be
 23 available to those least in need.

24 We are dealing with a matter that is involved in the
 25 order of some fifty billion dollars of claims that have been

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Austern

1 or will be paid, and what happens in the Manville Trust, which
 2 has been a bellwether in this field, will obviously have an
 3 impact throughout the nation and related industries. Since
 4 this is a matter of concern to us directly and of concern to
 5 many others, this hearing is called. The clerk has listed in
 6 order for presentation Mr. Dave Austern, Mr. Inselbuch,
 7 Mr. Leslie Gordon Fagen, Steven Kazan, Mark Iota, and any
 8 other counsel or party who wishes to be heard. If you wish to
 9 be heard and you are not listed, if you will come up to my law
 10 clerk or one of Judge Lifland's law clerks, your name will be
 11 added.

12 Do you want to add anything?

13 JUDGE LIFLAND: No, I think you have expressed our
 14 concerns, and with respect to the bankruptcy matters I am now
 15 seeing a situation where, indeed, misallocation and the
 16 musterling of claimants becomes a constipating factor in making
 17 any kind of realistic distribution and it brings to light the
 18 fact that there is a litigation in industry which is something

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1 THE COURT: Good morning, everybody.
 2 We are very pleased to see you all. It is very
 3 gracious of you to come all the way out to Brooklyn. This
 4 hearing is called because we have received the last financial
 5 statement and record from the Trust, the period ending
 6 September 30th, and we have noted there is a continuing rise
 7 in the number of claims, and that the amounts paid pro-rata on
 8 the claims have been proposed by the Trust as we understand it
 9 to be reduced from ten to five percent because there simply is
 10 not enough money available to pay at the ten percent rate, and
 11 we have taken judicial notice of the continuing media and
 12 other campaigns encouraging the flood of new claims, many of
 13 them of people who are not at the moment suffering but may
 14 show some signs and possible future suffering.
 15 We have also taken judicial notice of the fact there
 16 have been more than a score of bankruptcy filings as a result
 17 of part of the increased number of claims, and the
 18 increasingly broad scope of the claims as they have been
 19 applied in companies and new theories. All of this suggesting

19 that we have to focus on with respect to finding ways to
 20 correctly allocate available resources.

21 THE COURT: Mr. Austern, would you please begin.

22 MR. AUSTERN: Good morning, Your Honors. I am
 23 Dave Austern. I am general counsel of Manville Trust. I
 24 appear here on behalf of the Trust and as well as on behalf of
 25 two of its trustees here, Mr. Faile and Mr. Klein. I think I

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Austern

1 can tell you that Dr. Macchiarola, another trustee, will also
 2 be here but I believe he will be delayed. We are responding to
 3 the court's order of November 7, 2001.

4 Your Honor, I have a presentation I would like to
 5 make with respect to some Trust data. We have handed out
 6 copies I hope to everyone but if people do not have copies,
 7 there are some more up here and Mr. Hall can perhaps
 8 distribute them.

9 THE COURT: I think we might have them. Could we get
 10 another set please, two sets.

11 MR. AUSTERN: I do have some preparatory comments I
 12 would like to make first. First I would like to correct what
 13 may be a misreading of the Trustee's letter to the Court.
 14 There is a statement in the letters to the effect that there
 15 have been some meetings with the selected counsel for the
 16 beneficiaries representing the plaintiffs' bar as well as
 17 Mr. Fagen and others concerning possible changes to our Trust

13 claims, I guess. Maybe not as severe as is
14 singular tort system we have.

15 MR. INSELBUCH: There never was, Judge.

16 JUDGE WEINSTEIN: It has become more diverse with
17 all of these so-called reforms.

18 MR. INSELBUCH: I'm not sure that's so either, but
19 whatever it is, it is.

20 JUDGE WEINSTEIN: Right.

21 MR. INSELBUCH: We have 50 jurisdictions. Each one
22 of them addresses torts, asbestos torts in its own way, and
23 when we deal with a plan we have to take account for the many
24 different ways that the tort system does address asbestos
25 liabilities.

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1 The Court will remember with some pain I suspect that
2 we went to the 2d Circuit and they scolded us and sent us back
3 because we hadn't accounted for certain aspects of the tort
4 system which we then had to refer and the Court was required
5 to appoint additional representatives so that we did that in a
6 proper way.

7 JUDGE WEINSTEIN: Incidentally, is there anybody
8 from these third-party claimants' groups that want to speak
9 today that are on the list?

10 MR. PODESTA: Roger Podesta. I put my name on the
11 list in case I had something to say. I was one of the

11 very little argument about any of these points. Until the
12 year 2000, in fact until somewhere into the year 2000, when we
13 had a combination of things happen all at once, people began
14 to say this is important, we should focus on it. What
15 happened? Claims went up dramatically. Eight major asbestos
16 defendants went into Chapter 11. All of a sudden people
17 realized we now have a large zero sum. This is no longer a
18 situation where each claimant can go into the tort system and
19 get whatever his or her right share of the pot ought to be.
20 We are moving away from that and we have to do something to
21 accommodate all of the competing interests.

22 I can assure the Courts that we have been working
23 diligently on that problem.

24 JUDGE WEINSTEIN: Well, I think both of us
25 appreciate your importance in this endeavor and, also, Mr.

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1 Peterson's in integrating the total structure of payments
2 because they are all in a sense interrelated. What happens in
3 one bankruptcy will have an effect on the other.
4 MR. INSELBUCH: What I'm saying to the Court is under
5 the terms of the TDP, which is the governing document that
6 affects the Manville Trust as it exists today, there are three
7 fiduciaries charged with responsibility to worry about these
8 problems, sort through them, exercise their fiduciary judgment
9 and move on and continue observing.

13 JUDGE WEINSTEIN: As long as they have some input
14 because they are important. Fine.

15 MR. INSELBUCH: So, I think two issues have arisen
16 that -- two principal issues have arisen in connection with
17 the Manville Trust and in connection with all asbestos
18 litigation that have not yet been resolved on a factual
19 basis. One, there have been a lot more claims filed in a very
20 recent period of time. What does that mean? Does that mean
21 that we've ramped up? We are going to work from that forever
22 as in some sense the trust's projections reflect? Is this a
23 blip? If it is a blip, why is it a blip? What does it mean
24 to us?

25 Second -- actually, there are three issues. Second

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1 issue is in that new group of claims or larger group of claims
2 are we seeing claims different from the claims we saw before?
3 Are they sufficiently different that they implicate the
4 provisions of the TDP that said wait a minute, that's not what
5 we were talking about? If that's so, what do we do about
6 that?

7 Third, have the relative values in the tort system in
8 general changed from what we saw reflected -- what we imported
9 into the TDP and have been following?

10 Interestingly enough, until quite recently there was

10 JUDGE WEINSTEIN: Who is the three fiduciaries?

11 MR. INSELBUCH: Three fiduciaries are the trustees
12 themselves, the futures representative and the selected
13 counsel for the beneficiaries.

14 JUDGE WEINSTEIN: There is a possible fourth?

15 MR. INSELBUCH: The Court.

16 JUDGE WEINSTEIN: The chancellors. The chancellors.

17 MR. INSELBUCH: The chancellery?

18 JUDGE WEINSTEIN: Yes.

19 MR. INSELBUCH: Possible fourth. We are here, your
20 Honor --

21 JUDGE WEINSTEIN: We haven't stated that we have or
22 will utilize any power. We're just here at the moment as
23 observers.

24 MR. INSELBUCH: But I would --

25 JUDGE LIFLAND: Concerned observers.

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1 MR. INSELBUCH: We are all concerned observers, but
2 some people have the responsibility to take action here. I
3 can assure the Court that they are aware of that
4 responsibility. They are working on this. It's not easy, the
5 facts are difficult to understand completely, but it is their
6 job and they are dutifully attempting to come to grips with a
7 resolution that will not only, not only I suspect satisfy
8 these Courts that they've done what they're supposed to do.